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Human Rights Council
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Agenda item 3

Resolution adopted by the Human Rights Council on 22 March 2018

37/3. Integrity of the judicial system

The Human Rights Council,

Guided by articles 5, 6, 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4, 6, 7, 10, 14, 15, 16 and 26 of the International Covenant on Civil and Political Rights, and bearing in mind the Vienna Declaration and Programme of Action,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance,

Recalling also other important documents on the issue of the integrity of the judiciary endorsed by various forums of the United Nations, in particular the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Safeguards guaranteeing protection of the rights of those facing the death penalty, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and the Bangalore Principles of Judicial Conduct,

Recalling further its resolutions 19/31 of 23 March 2012, 25/4 of 27 March 2014 and 31/2 of 23 March 2016, and previous relevant resolutions of the Commission on Human Rights,

Stressing that most of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are not territorially limited and cannot be read as restricting or limiting States' obligations to respect the rights of all persons, anywhere in the world, to be free from torture and ill-treatment,

Underlining that all States must ensure that their obligations and commitments under international law, including international and regional human rights instruments to which they are party, are applied to any person kept in detention facilities under their jurisdiction, including when those facilities are situated abroad,

Convinced that the integrity of the judicial system, together with its independence and impartiality, is an essential prerequisite for the protection of human rights and

fundamental freedoms, for upholding the rule of law and democracy and ensuring that there is no discrimination in the administration of justice,

Noting with concern that the lack of and discrimination in access to justice can cause grave violations of the human rights of those deprived of such access,

1. *Reaffirms* the right of everyone to recognition everywhere as a person before the law;

2. *Notes with concern* certain practices that are applied to persons in detention in violation of human rights and the rule of law, such as detention without a legal basis, contrary to the principle of habeas corpus, the deprivation of due process of law, of access to legal counsel and/or of an opportunity to challenge the legality of their detention before a court that is a part of the general judicial system, and calls upon States to respect judicial guarantees as provided for in international law, including international human rights law and humanitarian law, as applicable;

3. *Reiterates* that, as provided for in article 14 of the International Covenant on Civil and Political Rights, every person is entitled, in full equality, to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of his or her rights and obligations and of any criminal charge against him or her, and that he or she is entitled to the presumption of innocence until proved guilty according to law;

4. *Notes* that, according to paragraph 5 of the Basic Principles on the Independence of the Judiciary, everyone has the right to be tried by ordinary courts or tribunals using established legal procedures, and that tribunals that do not use duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals;

5. *Underlines* that any court trying a person charged with a criminal offence should be competent, independent and impartial;

6. *Urges* States to guarantee that all persons brought to trial before courts or tribunals under their authority have the right to be tried in their presence, to defend themselves in person or through legal assistance of their own choosing and to have all the guarantees necessary for their legal defence;

7. *Calls upon* States to ensure that the principle of equality before the courts and before the law is respected within their judicial systems by, inter alia, providing to those being tried the possibility to examine, or to have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

8. *Stresses* that no one shall be held in secret detention, and urges States concerned to close down promptly all secret detention facilities under their jurisdiction or control situated on their territories or abroad, and to ensure that all persons held in detention under their authority are provided with access to justice by courts and tribunals that are an integral part of the general judicial system, acting in compliance with international due process and fair trial standards;

9. *Calls upon* States to investigate promptly and impartially all alleged cases of extraordinary renditions, secret detention, torture and practices tantamount to torture or other cruel, inhuman or degrading treatment, including under the pretext of countering terrorism, and to hold accountable everyone implicated, including at the highest level of authority, in ordering or executing those activities;

10. *Also calls upon* States to provide access to an effective remedy to all those who have been subject to prolonged arbitrary arrest and/or physical and mental suffering owing to lack of access to the general judicial system;

11. *Reaffirms* that every convicted person should have the right to have his or her conviction and sentence reviewed by a tribunal of competent, independent and impartial jurisdiction according to law;

12. *Calls upon* States that have military courts or special tribunals for trying criminal offenders to ensure that such bodies are an integral part of the general judicial system, operate in accordance with applicable fair trial guarantees, and apply procedures that are recognized according to international law as guarantees of a fair trial, including the right to appeal a conviction and a sentence;

13. *Stresses* the importance of developing cooperation between national judicial systems with a view to, inter alia, strengthening the protection of persons deprived of their liberty;

14. *Also stresses* that independent and effective national human rights institutions can and should play a role in strengthening the rule of law and in supporting the independence and integrity of the judicial system;

15. *Requests* the United Nations High Commissioner for Human Rights, in consultation with States, relevant United Nations agencies, special procedures, treaty bodies, non-governmental organizations and other relevant stakeholders, to prepare and submit to the Human Rights Council at its forty-third session a comprehensive study on the implications of the lack of integrity of the judicial system for human rights, in particular for persons kept in detention facilities outside the territory of States;

16. *Invites* the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances to take full account of the present resolution in the discharge of their mandates;

17. *Decides* to continue consideration of this issue in accordance with its annual programme of work.

53rd meeting
22 March 2018

[Adopted by a recorded vote of 23 to 2, with 22 abstentions. The voting was as follows:

In favour:

Angola, Brazil, Burundi, Chile, China, Côte d'Ivoire, Cuba, Ecuador, Egypt, Ethiopia, Kenya, Kyrgyzstan, Mexico, Nepal, Pakistan, Panama, Peru, Philippines, Rwanda, South Africa, Tunisia, United Arab Emirates, Venezuela (Bolivarian Republic of)

Against:

Georgia, United States of America

Abstaining:

Afghanistan, Australia, Belgium, Croatia, Democratic Republic of the Congo, Germany, Hungary, Iraq, Japan, Mongolia, Nigeria, Qatar, Republic of Korea, Saudi Arabia, Senegal, Slovakia, Slovenia, Spain, Switzerland, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland]